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## IN THE UNITED STATES DISTRICT COURT

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## FOR THE NORTHERN DISTRICT OF CALIFORNIA

6

7

RAIMI SHOAGA,

No. C 05-02213 SBA

8

Plaintiff,

**ORDER**

9

v.

[Docket No. 27]

10

BLOSADA, et al.,

11

Defendants.

12

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This matter comes before the Court on Defendants Maersk, Inc. and Maersk Lines, Ltd.'s Motion to Dismiss [Docket No. 27]. Having read and considered the arguments presented by the parties in the papers submitted to the Court, the Court finds this matter appropriate for resolution without a hearing. The Court hereby GRANTS IN PART AND DENIES IN PART Defendants Maersk, Inc. and Maersk Lines, Ltd.'s Motion to Dismiss [Docket No. 27].

18

**BACKGROUND**

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**A. Factual Background<sup>1</sup>**

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**1. Parties**

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Defendant Maersk, Inc. ("Maersk, Inc.") is an oceangoing shipping company and an agent for

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<sup>1</sup>The following facts have been taken from Plaintiff's Amended Complaint. The Court notes that both Plaintiff and the moving defendants have attempted to supplement the factual allegations contained in the Amended Complaint by submitting additional evidence and testimony through declarations. However, since the Amended Complaint is before the Court on a 12(b)(6) motion, the Court's analysis is limited to the allegations that are actually contained in the Amended Complaint and any exhibits that have been incorporated by reference. *See* Fed. R. Civ. P. 12(b)(6). The Court may *not* consider additional allegations or evidence without converting the motion into a motion for summary judgment. *Id.* Accordingly, the Court has not considered the Declaration of Michael Hopkins, the Supplemental Declaration of Michael Hopkins, the Declaration of Massoud Messkoub, the Declaration of Aogu Andrew Tsukamoto, the Declaration of Raimi Shoaga, or the exhibits attached to the Opposition of Raimi Shoaga.

1 maritime cargo shipping services, with cargo forwarding facilities in Oakland, California. Amended  
2 Complaint ("AC") at 2:8-10. Defendant Maersk Lines, Ltd. ("Maersk Lines") is similarly an oceangoing  
3 shipping company and agent for maritime cargo shipping services, with cargo forwarding facilities in  
4 Oakland, California. *Id.* at 2:12-14. Maersk Nigeria, Ltd. ("Maersk Nigeria") and Blosada are also  
5 named as defendants, but neither has joined the instant motion. Both Maersk Nigeria and Blosada are  
6 located in Lagos, Nigeria. *Id.* at 2:5-6, 2:16-17. Plaintiff Raimi Shoaga ("Plaintiff") is an individual  
7 and resident of the city of Oakland, California. *Id.* at 2:2-3.

8 **2. Allegations**

9 According to Plaintiff, on or about January 29, 2004, Plaintiff entered into a pre-paid shipping  
10 agreement with both Maersk, Inc. and Maersk Lines, wherein it was agreed that in exchange for \$5,100,  
11 Maersk, Inc. and Maersk Lines would provide Plaintiff with cargo shipping and demurrage services to  
12 Lagos, Nigeria in connection with the delivery of a shipping container supplied by Defendants and filled  
13 with Plaintiff's personal effects. *Id.* at 2:19-3:1.<sup>2</sup> Pursuant to this contract, the container was to be  
14 released by the Federal Government of Nigeria. *Id.* at 2:27-3:3. The alleged contract also provided that  
15 the Federal Government of Nigeria would have, after inspection, the sole responsibility for the release  
16 of Plaintiff's cargo. *Id.*

17 The container arrived in Lagos in August 2004. *Id.* at 2:27-3:1. However, from August 2004  
18 to January 2005, the cargo was not released. *Id.* at 3:5-6. In January of 2005, Plaintiff visited Nigeria  
19 and was informed that he owed an outstanding balance for additional shipping and demurrage charges  
20 of more than \$10,000 and that the defendants would not release the container to Plaintiff until such  
21 charges were paid. *Id.* at 3:8-15. Plaintiff subsequently attempted to receive an explanation justifying  
22 the additional charges, but never received such explanation. *Id.* at 3:17-19. In April 2005, Plaintiff was  
23 informed by defendants Blosada and Maersk Nigeria that Plaintiff was liable to all of the defendants for  
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26 \_\_\_\_\_  
27 <sup>2</sup>The alleged contract between Plaintiff and Maersk, Inc. and Maersk Lines is not attached to  
28 Plaintiff's Amended Complaint. However, Plaintiff has attached the Bill of Lading, which appears to  
have been issued by a company named Target Shipping, Inc. *Id.* at Ex. 5. The Bill of Lading indicates  
that the "Release Agent" is Maersk Nigeria.

1 the additional charges. *Id.* at 3:21-23.<sup>3</sup>

2 Plaintiff contends that, during the relevant period, each of the defendants knowingly made  
3 certain unspecified false statements to him and that these statements were made with the intention of  
4 inducing Plaintiff to pay \$5,100 in shipping charges. *Id.* at 4:13-23.

5 **B. Procedural Background**

6 On June 1, 2005, Plaintiff filed a Complaint in *propria persona* on behalf of himself and three  
7 other individuals. The Complaint named as defendants a person known as "Bolsada," an entity referred  
8 to as "Maersk Sealand Shipping Worldwide dba Maersk," Target Shipping, Inc., and Maersk Nig. Ltd.  
9 From the Complaint, it appeared that Bolsada and Maersk Nig. Ltd. were foreign entities or persons  
10 located in Nigeria. Plaintiff's Complaint alleged causes of action for "extortion," breach of contract of  
11 carriage, "illegal revenue enhancement," fraudulent misrepresentation, intentional and negligent  
12 misrepresentation, "corruption," and illegal demurrage charges. Plaintiff also alleged that federal  
13 jurisdiction was premised on admiralty and maritime jurisdiction, pursuant to 28 U.S.C. § 1333.

14 On September 6, 2005, Plaintiff filed a motion for entry of default as to defendants Bolsada,  
15 Maersk Nig. Ltd., and Maersk Sealand Shipping Worldwide. Additionally, Plaintiff moved for entry  
16 of default against Maersk Lines, Ltd. Also on September 6, 2005, Plaintiff voluntarily dismissed  
17 defendant Target Shipping, Inc.

18 On September 19, 2005, the Clerk of Court declined to enter default against defendants Bolsada  
19 and Maersk Nig. Ltd. The Clerk also declined to enter default against Maersk Lines, Ltd.

20 On September 22, 2005, Maersk, Inc. and Maersk Lines, Ltd. specially appeared in the action  
21 by filing a Separate Case Management Conference Statement and Motion for Sanctions ("Motion for  
22 Sanctions"). In the Motion for Sanctions, Maersk, Inc. and Maersk Lines, Ltd. informed the Court that  
23 "Maersk Sealand Shipping Worldwide" was a non-existent entity and that Plaintiff had attempted to  
24 serve process on Maersk, Inc. and Maersk Lines, Ltd., despite the fact that the companies were not  
25 actually named as defendants in Plaintiff's Complaint.

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27 <sup>3</sup>Although it is not entirely clear, it appears that Plaintiff received certain invoices detailing the  
28 charges. *See id.* at Exs. 3-4. These invoices appear to have been prepared by an entity known as  
"Maersk Sealand." *Id.*

1 On September 29, 2005, Plaintiff filed an Opposition to Maersk, Inc. and Maersk Lines, Ltd.'s  
2 Motion for Sanctions.

3 On October 5, 2005, the Court issued an Order denying the Motion for Sanctions. The Court  
4 also struck reference to the three other "plaintiffs" on whose behalf Plaintiff had brought the suit.  
5 Additionally, Plaintiff was explicitly instructed to file proofs of service with the Court demonstrating  
6 that the defendants named in the Complaint had been properly served pursuant to Federal Rule of Civil  
7 Procedure 4 on or before October 19, 2005.

8 On October 14, 2005, Plaintiff filed the instant Amended Complaint in *propria persona* on  
9 behalf of himself and against defendants "Blosada," Maersk, Inc., Maersk Lines, Ltd., and Maersk Nig.  
10 Ltd. The Amended Complaint alleges three causes of action for: (1) breach of contract; (2) violations  
11 of 18 U.S.C. § 1951(b)(2)<sup>4</sup> and 18 U.S.C. § 201;<sup>5</sup> and (3) fraud. Plaintiff contends that federal  
12 jurisdiction is premised on admiralty and maritime jurisdiction, pursuant to 28 U.S.C. § 1333(1) and 46  
13 U.S.C. § 740.

14 On November 3, 2005, defendants Maersk, Inc. and Maersk Lines, Ltd. filed the instant Motion  
15 to Dismiss pursuant to Federal Rules of Civil Procedure 12(b)(6) and 9(b). Defendants Blosada and  
16 Maersk Nigeria have not yet appeared in this action.

## **LEGAL STANDARD**

18 | A. Federal Rule of Civil Procedure 12(b)(6)

Under Federal Rule of Civil Procedure 12(b)(6), a motion to dismiss should be granted if it appears beyond a doubt that the plaintiff "can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957). For purposes of such a motion, the complaint is construed in a light most favorable to the plaintiff and all properly pleaded factual allegations are taken as true. *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969); *Everest and Jennings, Inc. v. American Motorists Ins. Co.*, 23 F.3d 226, 228 (9th Cir. 1994). All reasonable inferences are to be drawn in favor of the plaintiff. *Jacobson v. Hughes Aircraft*, 105 F.3d 1288, 1296 (9th Cir. 1997).

<sup>27</sup> 18 U.S.C. § 1951 is entitled "Interference with commerce by threats or violence."

<sup>5</sup>18 U.S.C. § 201 is entitled "Bribery of public officials and witnesses."

1 When a plaintiff attaches exhibits to the complaint, those exhibits may be considered as part of the  
2 pleadings. *Cooper v. Bell*, 628 F.2d 1208, 1210 n. 2 (9th Cir. 1980).

3 The court does not accept as true unreasonable inferences or conclusory legal allegations cast  
4 in the form of factual allegations. *Western Mining Council v. Watt*, 643 F.2d 618, 624 (9th Cir. 1981);  
5 see *Miranda v. Clark County, Nev.*, 279 F.3d 1102, 1106 (9th Cir. 2002) ("[C]onclusory allegations of  
6 law and unwarranted inferences will not defeat a motion to dismiss for failure to state a claim.");  
7 *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 ("Nor is the court required to accept as true  
8 allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences."),  
9 *as amended by*, 275 F.3d 1187 (9th Cir. 2001); *McGlinch v. Shell Chem. Co.*, 845 F.2d 802, 810 (9th  
10 Cir. 1988) ("[C]onclusory allegations without more are insufficient to defeat a motion to dismiss for  
11 failure to state a claim.")).

12 When a complaint is dismissed for failure to state a claim, "leave to amend should be granted  
13 unless the court determines that the allegation of other facts consistent with the challenged pleading  
14 could not possibly cure the deficiency." *Schreiber Distrib. Co. v. Serv-Well Furniture Co.*, 806 F.2d  
15 1393, 1401 (9th Cir. 1986). The court should consider factors such as "the presence or absence of undue  
16 delay, bad faith, dilatory motive, repeated failure to cure deficiencies by previous amendments, undue  
17 prejudice to the opposing party and futility of the proposed amendment." *Moore v. Kayport Package  
18 Express*, 885 F.2d 531, 538 ( 9th Cir. 1989). Of these factors, prejudice to the opposing party is the  
19 most important. See *Jackson v. Bank of Hawaii*, 902 F.2d 1385, 1387 (9th Cir. 1990) (citing *Zenith  
20 Radio Corp. v. Hazeltine Research, Inc.*, 401 U.S. 321, 330-31 (1971)). Leave to amend is properly  
21 denied "where the amendment would be futile." *DeSoto v. Yellow Freight Sys.*, 957 F.2d 655, 658 (9th  
22 Cir. 1992).

23 **B. Federal Rule of Civil Procedure 9(b)**

24 Federal Rule of Civil Procedure 9(b) provides as follows:

25 In all averments of fraud or mistake, the circumstances constituting  
26 fraud or mistake shall be stated with particularity. Malice, intent,  
27 knowledge, and other condition of mind of a person may be averred  
28 generally.

Fed. R. Civ. P. 9(b).

1        "[The Ninth Circuit] has interpreted Rule 9(b) to require that 'allegations of fraud are specific  
2 enough to give defendants notice of the particular misconduct which is alleged to constitute the fraud  
3 charged so that they can defend against the charge and not just deny that they have done anything  
4 wrong.'" *Neubronner v. Milken*, 6 F.3d 666, 671 (9th Cir. 1993) (quoting *Semegen v. Weidner*, 780 F.2d  
5 727, 731 (9th Cir. 1985)). "The pleader must state the time, place, and specific content of the false  
6 representations as well as the identities of the parties to the misrepresentation." *Schreiber Distributing*  
7 *Co. v. Serv-Well Furniture Co.*, 806 F.2d 1393, 1401 (9th Cir. 1986) (citing *Semegen*, 780 F.2d at 731).

## ANALYSIS

## I. Maersk, Inc. and Maersk Lines' Motion to Dismiss

10 In the instant Motion to Dismiss, Defendants Maersk, Inc. and Maersk Lines (hereinafter referred  
11 to as the "Moving Defendants") have moved to dismiss Plaintiff's Amended Complaint on the grounds  
12 that: (1) Plaintiff's first cause of action fails to state a claim against the Moving Defendants because  
13 Maersk, Inc. and Maersk Lines never entered into a contract with Plaintiff; (2) Plaintiff has not stated  
14 a claim for bribery or extortion and may not prosecute alleged violations of those criminal statutes as  
15 a private citizen; and (3) Plaintiff has not plead fraud with the requisite specificity.<sup>6</sup>

#### **A. Plaintiff's First Cause of Action for Breach of Contract**

17        In support of his first cause of action, Plaintiff claims that he entered into a pre-paid shipping  
18 agreement with the Moving Defendants to deliver cargo from Oakland, California to Lagos, Nigeria.  
19 In support of these allegations, Plaintiff has attached to his Amended Complaint a Bill of Lading, which  
20 functions as a contract in the shipping industry. The Bill of Lading appears to be a contract between  
21 Target Shipping, Inc. and Plaintiff. There is no reference to either Maersk, Inc. or Maersk Lines on the  
22 Bill of Lading.

23 Accordingly, the Moving Defendants argue that Plaintiff's cause of action for breach of contract  
24 must be dismissed because the Bill of Lading does not show that either Maersk, Inc. or Maersk Lines

26       <sup>6</sup>The Moving Defendants also assert that Plaintiff's Opposition was filed late and should  
27 therefore be disregarded by this Court. The Court hereby admonishes Plaintiff for filing an untimely  
28 Opposition, and therefore failing to comply with the Civil Local Rules. However, the Court notes that  
the Moving Defendants have not been unduly prejudiced by Plaintiff's late filing. In fact, it appears that  
the Moving Defendants had an adequate amount of time to review and respond to Plaintiff's Opposition.  
Accordingly, the Court declines to strike Plaintiff's Opposition.

1 ever directly entered into an agreement with Plaintiff. However, the fact that Plaintiff contracted with  
2 Target Shipping, Inc. to arrange for the transport of his cargo does not necessarily prove, as a matter of  
3 law, that the Moving Defendants were not also parties to the transaction. For example, it appears that  
4 Target Shipping, Inc. may be a non-vessel operating common carrier ("NVOCC"), which acts as an  
5 intermediary between shippers and vessel operators to arrange for the consolidation of small shipments  
6 into larger ones. *See* 1 THOMAS J. SCHOENBAUM, ADMIRALTY AND MARITIME LAW 609 (4th ed. 2001);  
7 *see also National Customs Brokers & Forwarders Ass'n of America, Inc. v. U.S.*, 883 F.2d 93, 101 (D.C.  
8 Cir. 1989) (citing 46 U.S.C. § 1702(17)) ("The Shipping Act of 1984 recognized the NVOCC as a legal  
9 entity with the status of 'a shipper in its relationship with an ocean common carrier but the status of a  
10 carrier in its relationship with exporter customers.'"). It is therefore possible that Target Shipping, Inc.  
11 entered into an agreement with the Moving Defendants on behalf of Plaintiff for the shipment of his  
12 goods. If this were indeed the structure of the relationship, then it is possible that the Moving  
13 Defendants could be liable to Plaintiff for breach of contract.<sup>7</sup>

14 The Moving Defendants also argue that they are not liable under Plaintiff's breach of contract  
15 theory because the instant dispute arose in Nigeria and solely concerns Maersk Nigeria, which is a  
16 separate entity. The Court agrees that it appears that Plaintiff is alleging that the dispute arose after the  
17 unloading of the cargo in Lagos. However, at this stage in the litigation, the Court has no basis to  
18 conclude that the Moving Defendant's alleged contractual liability ended after the unloading of the cargo  
19 at the port. For example, sea carriers generally contract with a stevedore company to load and unload  
20 freighters at port. *See* SCHOENBAUM, *supra*, at 610. However, the contract of carriage may continue  
21 to govern the relationship between the shipper and the carrier after the discharge but before the delivery  
22 of the cargo to the consignee. *Id.*; *Leather's Best, Inc. v. S.S. Mormaclynx*, 451 F.2d 800, 807 (2d Cir.  
23 1971). Thus, it is possible for a shipping contract with a carrier to continue to have effect after the cargo  
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27 <sup>7</sup>The Court finds it important to note that this not a finding by the Court that Plaintiff has shown  
28 such facts to be true or applicable. However, since Plaintiff is *pro per*, the Court must construe his  
pleadings liberally. Further, on a 12(b)(6) motion to dismiss, all reasonable inferences are to be drawn  
in Plaintiff's favor. *Jacobson*, 105 F.3d at 1296.

1 is unloaded, even when the dispute arises from subsequent actions of the stevedore company.<sup>8</sup>

2 Given the standard that this Court must apply on a 12(b)(6) motion to dismiss, the Moving  
3 Defendants' arguments against Plaintiff's breach of contract claim are therefore insufficient to warrant  
4 dismissal of his claim. Plaintiff has specifically alleged that the Moving Defendants entered into a  
5 contract with him for the transport of his goods and subsequently breached that agreement. When the  
6 Court construes these allegations in the light most favorable to Plaintiff, Plaintiff's allegations are  
7 sufficient to state a claim. Accordingly, the Moving Defendants' Motion to Dismiss Plaintiff's first  
8 cause of action is DENIED.

9 **B. Plaintiff's Second Cause of Action for Extortion and Bribery**

10 The Moving Defendants have also moved for dismissal of Plaintiff's second cause of action  
11 on the grounds that Plaintiff has failed to state a claim for either extortion or bribery and on the  
12 alternative grounds that the statutes cited in Plaintiff's second cause of action are criminal and do not  
13 provide Plaintiff with a private right of action.

14 **1. Extortion Claim**

15 Plaintiff's second cause of action is premised in part on 18 U.S.C. § 1951(b)(2). This statute  
16 reads in pertinent part:

17 (a) Whoever in any way or degree obstructs, delays, or affects commerce or  
18 the movement of any article or commodity in commerce, by robbery or  
19 extortion or attempts or conspires so to do, or commits or threatens physical  
20 violence to any person or property in furtherance of a plan or purpose to do  
anything in violation of this section shall be fined under this title or  
imprisoned not more than twenty years, or both.

21 (b) As used in this section—  
22 . . .

23 (2) The term "extortion" means the obtaining of property from  
another, with his consent, induced by wrongful use of actual or  
threatened force, violence, or fear, or under color of official right.

24 (3) The term "commerce" means commerce within the  
District of Columbia, or any Territory or Possession of the  
United States; all commerce between any point in a State,  
Territory, Possession, or the District of Columbia and any  
point outside thereof; all commerce between points within the  
same State through any place outside such State; and all other

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28 <sup>8</sup>Again, this not a finding by the Court that Plaintiff has shown such facts to be true or applicable.

1 commerce over which the United States has jurisdiction.

2 18 U.S.C.A § 1951.

3 As an initial matter, the Moving Defendants argue that Plaintiff's dispute over the release of his  
4 cargo is actually with the Federal Government of Nigeria. In support of this, the Moving Defendants  
5 refer the Court to the portion of Plaintiff's Amended Complaint wherein he admits that the Federal  
6 Government of Nigeria had sole responsibility for the inspection of, and release of, his cargo. However,  
7 the Amended Complaint also states that Maersk, Inc. and Maersk Lines were responsible for failing to  
8 release Plaintiff's cargo from August 2004 to January 2005. AC at 3:5-6. Thus, even with this apparent  
9 contradiction, the Amended Complaint could still be reasonably interpreted as asserting that the Moving  
10 Defendants were required to release the cargo to the Federal Government of Nigeria before the cargo  
11 could be released to the owner. However, the statute also requires that Plaintiff plead and prove that  
12 the defendants interfered with his cargo by robbery, extortion, or through the commission or threat of  
13 physical violence. Plaintiff's Amended Complaint does not state any such facts. Accordingly, he has  
14 not stated a claim under 18 U.S.C.A § 1951.

15 More importantly, however, Plaintiff cannot proceed on this claim because no private right of  
16 action exists under 18 U.S.C. § 1951, which is a criminal statute. *See Wisdom v. First Midwest Bank*,  
17 167 F.3d 402, 407 (8th Cir. 1999) (citing *Thompson v. Thompson*, 484 U.S. 174, 179 (1998)) ("We agree  
18 that neither the statutory language of 18 U.S.C. § 1951 nor its legislative history reflect an intent by  
19 Congress to create a private right of action."). The Court finds that no factual pleading by Plaintiff  
20 could cure this deficiency. As such, Plaintiff's claim under 18 U.S.C. § 1951 is DISMISSED WITH  
21 PREJUDICE.

22 **2. Bribery Claim**

23 Plaintiff's second cause of action is also brought under 18 U.S.C. § 201. This statute reads in  
24 pertinent part:

25 (a) For the purpose of this section--

26 (1) the term "public official" means Member of Congress, Delegate, or  
27 Resident Commissioner . . . or an officer or employee or person acting for or  
on behalf of the *United States* . . . in any official function, under or by authority  
of any such department, agency, or branch of Government, or a juror;

• • •

(3) the term "official act" means any decision or action on any question, matter, cause, suit, proceeding or controversy, which may at any time be pending, or which may by law be brought before any public official, in such official's official capacity, or in such official's place of trust or profit.

(b) Whoever--

(1) directly or indirectly, corruptly gives, offers or promises anything of value to any public official . . . or offers or promises any public official . . . to give anything of value to any other person or entity, with intent--

(A) to influence any official act; or

(B) to influence such public official . . . to commit or aid in committing, or collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States; or

(C) to induce such public official . . . to do or omit to do any act in violation of the lawful duty of such official or person[.]

18 U.S.C. § 201 (emphasis added).

As the Moving Defendants point out, the Amended Complaint does not contain any facts that would trigger liability under this statute. In fact, the Amended Complaint merely states, without any factual support, that a violation of 18 U.S.C. § 201 has been committed. There is no accusation that anything was offered or given to anyone in return for any influence. Moreover, Plaintiff has failed to show how any United States official was involved, or could possibly have been involved, in the alleged criminal activities, as required by the statute.

Additionally, like 18 U.S.C. § 1951, 18 U.S.C. § 201 is a criminal statute and does not provide Plaintiff with a private right of action. *See Ray v. Proxmire*, 581 F.2d 998, 1101 (D.C. Cir. 1978), *cert. denied*, 439 U.S. 933 (1978) ("[T]his legislation 'is a bare criminal statute with absolutely no indication that civil enforcement of any kind was available to anyone.' . . . [A]ppellant has no privately-enforceable right under this penal provision."); *accord City of San Francisco v. United States*, 443 F. Supp. 1116, 1129 (N.D. Cal. 1977). Because the Court finds that no factual pleading by Plaintiff could cure this deficiency, Plaintiff's claim under 18 U.S.C. § 201 is DISMISSED WITH PREJUDICE. The Moving Defendants' Motion to Dismiss Plaintiff's second cause of action is therefore GRANTED.

1                   **C. Plaintiff's Third Cause of Action for Fraud**

2                   Last, the Moving Defendants argue that Plaintiff's third cause of action must be dismissed  
3 because Plaintiff has failed to comply with the more stringent pleading requirements of Federal Rule  
4 of Civil Procedure 9(b).

5                   The Moving Defendants are correct that the Rule 9(b) pleading requirements are applicable to  
6 Plaintiff's cause of action for fraud. Applying the Rule 9(b) pleading standard, it is quite apparent that  
7 the Amended Complaint falls considerably short of its requirements. For example, Plaintiff does not  
8 provide any specifics as to when, where, or how the alleged fraudulent acts took place. Instead, he  
9 merely makes conclusory statements that the defendants knowingly made false statements and induced  
10 him to rely on these statements. The Moving Defendants cannot possibly be expected to adequately  
11 defend against such broad and unparticularized assertions. Under the standards mandated by Rule 9(b),  
12 more specificity is clearly required.

13                  Plaintiff also fails to "plead with sufficient particularity attribution of the alleged  
14 misrepresentations or omissions to *each* defendant . . . to 'distinguish among those [being sued to]  
15 enlighten each defendant as to his or her part in the alleged fraud.'" *In Re Silicon Graphics*, 970 F.Supp.  
16 746, 752 (N.D. Cal. 1997) (quoting *Erickson v. Kiddie*, 1986 WL 544, \*7 (N.D. Cal 1986)) (emphasis  
17 added). In fact, Plaintiff has made absolutely no effort to distinguish between defendant Maersk, Inc.'s  
18 and Maersk Lines' contributions to the alleged fraudulent behavior.

19                  Accordingly, the Court GRANTS the Moving Defendants' Motion to Dismiss Plaintiff's third  
20 cause of action. However, since it is conceivable that Plaintiff could cure the deficiencies in his  
21 Amended Complaint by sufficiently pleading the particular facts necessary to satisfy the Rule 9(b)  
22 requirements, Plaintiff is granted LEAVE TO AMEND his Amended Complaint.

23                   **II. The Defendants Who Have Not Filed a Motion to Dismiss**

24                  As a final matter, although the Court notes that defendants Blosada and Maersk Nigeria have  
25 not filed a motion to dismiss or any responsive pleading or document in this action, the Court finds it  
26 necessary to raise the question of personal jurisdiction *sua sponte*. See, e.g., *Burleson v. Toback*, 391  
27 F. Supp. 2d 401, 422 (M.D.N.C. 2005) (citing *System Pipe & Supply, Inc. v. M/V Viktor Kurnatovskiy*,  
28 242 F.3d 322, 324 (5th Cir.2001)). Raising this issue *sua sponte* is necessary and appropriate when the

1 allegations in a complaint do not establish a basis for the court's exercise of personal jurisdiction. *Id.*  
2 Here, Plaintiff admits in his Amended Complaint that Blosada resides in Lagos, Nigeria and that Maersk  
3 Nigeria is an entity located in Lagos, Nigeria. *See* AC at 2:5-6, 2:16-17. Further, the Amended  
4 Complaint does not state that Blosada or Maersk Nigeria committed any acts outside of Nigeria. *See*  
5 *id.* at 3:8-23.<sup>9</sup> As such, the question of whether this Court may exercise personal jurisdiction over  
6 Blosada and Maersk Nigeria is squarely presented.

7 Personal jurisdiction can be asserted over a foreign defendant only if permitted by California's  
8 long-arm statute and if doing so will not violate federal due process. *See Fireman's Fund Ins. Co. v.*  
9 *National Bank of Cooperatives*, 103 F.3d 888, 893 (9th Cir.1996). Thus, in order to establish personal  
10 jurisdiction, Plaintiff must demonstrate "that the forum state's jurisdictional statute confers personal  
11 jurisdiction, and that the exercise of jurisdiction accords with federal constitutional principles of due  
12 process." *Shute v. Carnival Cruise Lines*, 897 F.2d 377, 380 (9th Cir.1990), *rev'd on other grounds*, 499  
13 U.S. 585 (1991). Here, California's long arm statute provides that the court can exercise jurisdiction "on  
14 any basis not inconsistent with the Constitution of this state or of the United States." Cal. Code Civ.  
15 Proc. § 410.10. Therefore, it is only necessary to analyze whether the assertion of jurisdiction comports  
16 with due process under the U.S. Constitution. *See Rocke v. Canadian Auto. Sport Club*, 660 F.2d 395,  
17 398 (9th Cir.1981).

Under the jurisdictional test enunciated in *International Shoe v. Washington*, 326 U.S. 310, (1945), "due process require[s] that non-resident defendants have certain minimum contacts with the

21       <sup>9</sup>Further, it does not appear that Plaintiff has effectively served Blosada or Maersk Nigeria  
22 pursuant to the standards set forth in Federal Rule of Civil Procedure 4(f). In fact, it appears that  
23 Plaintiff has merely "served" these defendants by mailing a copy of the summons and Amended  
24 Complaint to an address in Nigeria. The postal cards attached to Plaintiff's proofs of service do not  
25 indicate that the mail was ever received by a Nigerian post office, much less by the actual defendants.  
26 This also warrants dismissal of these two defendants. The Court cannot exercise personal jurisdiction  
27 over a defendant unless there has been proper service over a defendant pursuant to Federal Rule of Civil  
Procedure 4. *Direct Mail Specialists v. Eclat Computerized Technologies, Inc.*, 840 F.2d 685, 688 (9th  
Cir.1988) (citing *Jackson v. Hayakawa*, 682 F.2d 1344, 1347 (9th Cir.1982)). Without substantial  
compliance with Rule 4, it is irrelevant whether a defendant has notice of a plaintiff's claims. *Id.* Here,  
not only does Plaintiff's method of service fail to comport with Rule 4(f)(2)(C)(ii), but it does not appear  
that service by mail is even allowed in Nigeria. *See Zhu v. First Atlantic Bank*, 2005 WL 2757536  
(S.D.N.Y. 2005) ("We are satisfied that Nigerian law . . . prohibit[s] service of process by mail[.]").

1 forum state, so that the exercise of jurisdiction does not offend traditional notions of fair play and  
2 substantial justice." *Id.* The factors to be balanced when considering whether the exercise of jurisdiction  
3 would comport with "fair play and substantial justice" are: (1) the extent of the defendant's purposeful  
4 interjection within the forum state; (2) the burden on the defendant in defending in the forum; (3) the  
5 extent of conflict with the sovereignty of the defendant's state; (4) the forum state's interest in  
6 adjudicating the dispute; (5) the most efficient judicial resolution of the controversy; (6) the importance  
7 of the forum to the plaintiff's interest in convenient and effective relief; and (7) the existence of an  
8 alternative forum. *See Burger King v. Rudzewicz*, 471 U.S. 464, 476 (1985).

9 There are two types of personal jurisdiction: general and specific. *Reebok International, Ltd.*  
10 *v. McLaughlin*, 49 F.3d 1387, 1391 (9th Cir. 1997), *cert. denied*, 516 U.S. 908 (1995). The presence  
11 of either general or specific jurisdiction will sustain the exercise of personal jurisdiction over a  
12 defendant. *Rano v. SIPA Press, Inc.*, 987 F.2d 580, 587 (9th Cir. 1993). If the court has "general  
13 jurisdiction" over the defendant, it may "hear cases unrelated to the defendant's forum-related activities."  
14 *Shute*, 897 F.2d at 380. However, general jurisdiction exists only when it is established that the  
15 defendant has "continuous and systematic contacts with the forum [such] that the exercise of jurisdiction  
16 does not offend traditional notions of fair play and substantial justice." *Id.* The Supreme Court and the  
17 Ninth Circuit have indicated that the necessary contacts to establish general jurisdiction are quite high.  
18 *See Helicopteros Nacionales de Colombia v. Hall*, 466 U.S. 408, 414 (1984).

19 If the defendant's contacts are not sufficient to establish general jurisdiction, then "a court may  
20 nevertheless assert jurisdiction for a cause of action arising out of the defendant's activities *within* the  
21 forum." *Shute*, 897 F.2d at 381 (emphasis added). This type of jurisdiction is referred to as "specific"  
22 or "limited" jurisdiction. *Id.* In order to establish "specific jurisdiction" over a non-resident defendant,  
23 the defendant must have done some act by which he purposefully availed himself of the privilege of  
24 conducting activities in the forum state, thereby invoking the benefits and protections of its laws. *Id.*  
25 Further, the claim must arise out of the defendant's forum related activities. *Id.*

26 Based on the standards set forth above, the Court concludes that the allegations in the Amended  
27 Complaint do not sufficiently establish that this Court has either general or specific personal jurisdiction  
28 over Blosada or Maersk Nigeria. Accordingly, Blosada and Maersk Nigeria are hereby DISMISSED

1 from the lawsuit. However, although the Court is doubtful that Plaintiff will be able to effectively  
2 demonstrate that the exercise of jurisdiction over these defendants would comport with the notions of  
3 "fair play and substantial justice," the Court recognizes that it may not dismiss these defendants from  
4 the lawsuit without prejudice until Plaintiff has been afforded "a reasonable opportunity to present any  
5 available evidence supporting the Court's jurisdiction." *System Pipe & Supply*, 242 F.3d at 325;  
6 *Burleson*, 391 F. Supp. 2d at 422. Accordingly, Plaintiff is hereby granted leave to file a second  
7 amended complaint against Blosada and Maersk Nigeria ***only if*** he can allege, in good faith, facts  
8 sufficient to show that the Court can exercise either general or specific personal jurisdiction over these  
9 defendants. **Plaintiff is explicitly warned that, if he does not sufficiently demonstrate in his second**  
10 **amended complaint that jurisdiction over these defendants is proper, he will be immediately**  
11 **ordered to show cause why the case should not be dismissed with prejudice with respect to these**  
12 **defendants.**

13 **CONCLUSION**

14 IT IS HEREBY ORDERED THAT defendants Maersk, Inc. and Maersk Lines, Ltd.'s Motion  
15 to Dismiss [Docket No. 27] is GRANTED IN PART AND DENIED IN PART. The Motion to Dismiss  
16 is DENIED with respect to Plaintiff's first cause of action. However, the Motion is GRANTED with  
17 respect to Plaintiff's second cause of action, which is hereby DISMISSED WITH PREJUDICE. The  
18 Motion is also GRANTED with respect to Plaintiff's third cause of action, which is hereby DISMISSED  
19 WITHOUT PREJUDICE.

20 IT IS FURTHER ORDERED THAT defendants Blosada and Maersk Nigeria, Ltd. are  
21 DISMISSED from this lawsuit WITHOUT PREJUDICE. Plaintiff is hereby granted leave to file a  
22 second amended complaint **by no later than thirty (30) days from the date of this Order**. Plaintiff  
23 may name Blosada and Maersk Nigeria, Ltd. in his second amended complaint **so long as Plaintiff can**  
24 **sufficiently demonstrate that this Court has a basis to assert personal jurisdiction over those**  
25 **defendants.** Plaintiff is expressly warned that, if he fails to plead facts sufficient to establish personal  
26 jurisdiction, **the Court will issue an order to show cause and Plaintiff will be directed to appear**  
27 **before the Court and will be required to produce specific evidence demonstrating that jurisdiction**  
28 **is proper.** The Court further reminds Plaintiff that, once a second amended complaint is filed, it will

## United States District Court

For the Northern District of California

1 supercede the prior complaints. The second amended complaint must be self-contained and cannot refer  
2 to, or incorporate by reference, any part of the initial Complaint or the Amended Complaint.  
3 Additionally, Plaintiff is expressly warned that, if his second amended complaint fails to rectify the  
4 deficiencies identified in this Order, it shall constitute sufficient grounds to support a finding that further  
5 leave to amend would be futile. If Plaintiff elects not to file a second amended complaint, the Amended  
6 Complaint will remain the operative complaint, and Plaintiff will be allowed to proceed on his first  
7 cause of action against defendants Maersk, Inc. and Maersk Lines, Ltd. ONLY.

8 IT IS FURTHER ORDERED THAT the Case Management Conference currently scheduled for  
9 January 24, 2006 at 1:00 p.m. is VACATED. The parties shall appear for a telephonic Case  
10 Management Conference on **Wednesday, March 8, 2006 at 2:30 p.m.** The parties shall meet and  
11 confer prior to the conference and shall prepare a joint Case Management Conference Statement which  
12 shall be filed no later than ten (10) days prior to the Case Management Conference. Counsel for  
13 defendants shall be responsible for filing the statement as well as for arranging the conference call. All  
14 parties shall be on the line and shall call (510) 637-3559 at the above indicated date and time.

15 IT IS SO ORDERED.

16 Dated: January 24, 2006  
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SAUNDRA BROWN ARMSTRONG  
United States District Judge